DISSERTATION

ON

QUEST TO RECOGNIZE MARITAL RAPE IN INDIA: A COMPARATIVE STUDY WITH UK AND NEPAL

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CERTIFICATE

This is to certify that the Dissertation titled **"Quest to recognize Marital Rape in India: A Comparative Study with UK and Nepal"** has been submitted by **Ishani Afrin,** bearing Enrollment ID: 2322215005020, Registration No: 230050203700 for partial fulfillments of the Degree of Master of Laws (LL.M) from Sister Nivedita University under my guidance. It is her original work and may be placed before the examiners for evaluation.

This research work has not been submitted for the award of any other degree of this University or of any other University.

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DECLARATION BY THE STUDENT

I hereby declare that the work which is being presented in this dissertation entitled "QUEST TO RECOGNIZE MARITAL RAPE IN INDIA: A COMPARATIVE STUDY WITH UK AND NEPAL" in partial fulfilment of the requirements for the award of the degree of Masters of LAW in CRIMINOLOGY is an authentic record of my own work carried out during the period from ---2024 to 2025 under the supervision of PROF. SHRESTHA NAG, Department of LAW, SISTER NIVEDITA UNIVERSITY.

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Place: Kolkata

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CHAPTER 1
INTRODUCTION

1.1 INTRODUCTION

"I just want to sleep. A coma would be nice. Or Amnesia. Anything, just to get rid of this, these thoughts, whispers in my mind. Did he rape my head too?".[1]

The extreme endurance and pain that a woman experiences while she is raped cannot be compared to any pain whatsoever and when it is about rape within marriage, it reveals the archaic practices and ideas regarding marriage and the continuous fight for all women to get justice for equality. For as long as people can recall, there was no conversation about forced sexual intercourse within marriage as people thought that marriage made a wife agree to sexual intercourse every time. Tracing back to the historical origin, Sir Matthew Hale during the 17th Century asserted with great sense of conviction that the husband is entitled to rape his wife because she is his 'wife'. This abstract idea kept men have the charge and lead women according to their own whims and fancies. However, UK eventually changed its path by changing the laws that guaranteed men the immunity to force his wife into sexual intercourse. UK's successful journey towards the absolute criminalization of marital rape was marked by the landmark ruling of *R v R*[2] which affirmed that consent with regard to sexual intercourse between a husband and a wife is crucial as is considered in a stranger rape as well. Nepal in the same vein, changed its laws with its notable contribution from the NGO's, judges and women advocates standing vehemently against sexual abuse and torture of women by their husbands. The judicial intervention in Nepal marks another example of rape within marriage an offense.[3] Whereas in stark contrast, India still remains under the shadow of the colonial-era which gave birth to the Exception 2 of Section 63, BNS, 2023 despite the growing need for reforms in the country. It is through the detailed case studies and judicial trends; the societal perceptions and needs of the society have been revealed and whether the changed legislation have safeguarded or violated the victim's sexual autonomy has been perused. There are systematic gaps in the legal system of India that is compared with the legal systems of UK and

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[1] Arpita Singh, *Marital Rape in India: A socio-legal Study,* SHODHGANGA (Nov. 28, 2017), https://shodhganga.inflibnet.ac.in

[2] [1991] UKHL 12

[3] See *infra* note 64, p. 21

Nepal thereby changing the imperative regarding marital rape laws of India. Leaning on the best practices that are favorably implemented in UK and Nepal, the paper has not only proposed for the immediate criminalization of marital rape but also has attempted to create a legislative framework for marital rape in India. Apart from the model law, the comparison of UK and Nepal with India's enforcement mechanisms, the important factor of consent and the statistics of the three countries has aided in drawing a conclusion whether or not these best practices can make a significant impact on India's legal reforms. The model law strives to combine the efforts of the police, prosecution and the role of various trauma centres and NGO's that are practiced in UK and Nepal including the Operation Soteria, End-to-End Rape Review and other operating models within India's proposed legal framework of marital rape. Ultimately, this paper not only aims to provide a perspective for a model law that could be applied in India but also propose to get rid of the age-old provision of Exception 2 u/s 63 BNS, 2023. It was a collaborative effort by the law enforcement agencies, the women advocates and activists and the NGO's that made UK and Nepal break the shackles of the dominance of the 700 years old doctrine of Coverture. It was stated by the Hon'ble Apex Court in the case of MP v Madanlal[4] that *"in a case of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct".* Therefore, if rape as an offense is such a gross violation of a woman's integrity, then how can a woman in a marital tie be expected to compromise her "non-perishable and immortal self" merely because the perpetrator is the husband in the latter case? If rape is universally condemned as a heinous offense that has a lasting impact both physically and emotionally, then why is the same not extended and accepted within a marriage? This study does not aim to put the blame on the husband or mark every sexual act within marriage as exploitative. Rather, it endeavors to create a balanced approach where a woman's bodily integrity shall be preserved while respecting the sanctity of marriage. The goal is to move towards a more viable and equitable understanding of marriage where consent and respect form its core.

Rationale behind choosing UK and Nepal-

[4] (2015) 7 SCC 681, *supra* note 1, at 2.

UK and Nepal have been chosen for a comparative analysis with India regarding the criminalization of marital rape due to their unique as well as relevant legal and socio-cultural and historical similarities.

UK, as the birth-giver of the Hale Doctrine, was deeply influenced by it for a long time until it got rid of it in the year 1991. India however, is still influenced by it with the subsistence of Exception 2 of Section 63 BNS, 2023. Apart from the Doctrine of Hale, both India and UK are common law countries especially when the British established their legal framework in India where India remained under the colonial rule for 90 years. While the legal principles of UK evolved with years, India's independence from the British colonial rule remains a significant link between the two countries. Both India and UK operate under a parliamentary system of governance that helps the legislative processes and reforms between both the countries be compared easily.

Nepal on the other hand has been chosen not only because it is our neighboring country, but also because both the countries share the same socio-cultural and religious traits where Nepal was and somewhat still is deeply rooted in the patriarchal norms with distinguishing gender roles. Nepal also has multi-cultural diversities which is similar to India where each place and areas has its own cultural and traditional beliefs and diversities. Both India and Nepal are influenced by personal and customary laws relating to marriage, divorce and property. Whereas, in tribal communities, customary rules often tend to override the formal statutory norms in both the countries. Nepal initially did not recognize marital rape as a criminal offense and consent was not considered as a vital factor in rape within marriage like that of India. However, the narrative got changed later with the long fight by the activists.

1.9 REVIEW OF LITERATURE

In essence, this article named *Rape Within Marriage- A Comparative Analysis Towards Indian Law Reform by Jawa Ratna and Arvind P. Bhanu*[5] aims and outlines different approaches of different countries that might be applied in India to better address the complexities and challenges regarding marital rape within the Indian Legal Framework. The role of judges, the trial procedure and evidentiary rules are the key highlighters of this article which are pertinent considerations if India were to criminalize marital rape thereby exploring different alternatives from the other countries. Whereas, emphasizing the divergence between India and the laws of UK and US, *Marital Rape Laws: India VIS-À-VIS US and UK by Tanya Sehrawat*[6] mentions at the same time incorporating the best alternatives available in the countries that have recognized marital rape as an offense which shows a pathway for India to do the same. The article not only demands for the criminalization of marital rape but also focuses that the criminal law of India does not criminalize marital rape for adult women that creates a clear contrast between the countries of US and UK. Briefly introducing the history of marital rape in India and its deeply embedded connection with the Doctrine of Coverture, the article focuses on how the non-recognition of marital rape violates the constitutional rights of women and at the same time violates her overall integrity that forms the very core of her existence. Focusing on the international standards of CEDAW and other Human Rights instruments, India clearly violates those standards and more importantly the reluctance on part of the Indian government that provides countless reasons for not criminalizing marital rape in India as was elaborated in *A Comparative Analysis of the Legal Status of Marital Rape by Neves Jujevaz Dsouza.*[7] Although there are no current legislations on marital rape in India,

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[5] Jawa Ratna and Arvind P. Bhanu, *Rape Within Marriage- A Comparative Analysis Towards Indian Law Reform,* 44(3), 23510, 23515-23520, (2024), https://bpasjournals.com

[6] Tanya Sehrawat, *Marital Rape Laws: India VIS-À-VIS US & UK,* 4(2) Indian J.L & Legal Rsch, 1, 12-13 (2022), https://heinonline.org

[7] Neves Jujevaz Dsouza, *A Comparative Analysis of the Legal Status of Marital Rape,* 5(1) Indian JLLegalRsch 1. 12-15 (2023), https://heinonline.org

the recommendations for making the same was provided by Justice Verma through the Verma Committee Recommendations. Tracing through various precedents of India, the article *Criminalization of Marital Rape: An Analysis of its Constitutionality with reference to Judicial Pronouncements in India written by Muskan Sharma*[8] has highlighted upon the contrary opinions on the criminalization of marital rape and how there is an urgent need to recognize the same as an offense. The provisions given under POCSO Act, 2012 and DV Act, 2005 is clearly not sufficient enough to address the issue of marital rape and violation of women's dignity for that matter. It is time for us to get out of the entire narrative of 'implied consent' where the wife gives her consent to her husband for her entire life which makes the life of a woman all the more traumatizing that what already is. Focusing on the concept of Infinite Consent Theory, *The Archaic Notions of Consent Theory: A Need to Criminalize Marital Rape in India by Divya Dutta*[9] goes against this theory where although it was derived from the UK's history of the wife giving her lifetime consent to her husband and even if the husband forces her wife to engage in sexual activity or intercourse, she has to submit to her husband and the husband cannot be held accountable. However, UK got rid of that this theory in 1991, but India is still holding this notion as if with pride. Furthermore, various arguments disfavoring the criminalization of marital rape was touched upon along with the non-conformity with the international standards. Author *Bijaya Khadka* in his article *Rights of crime victim under the prevailing laws of Nepal*[10] highlights upon the prevailing laws of Nepal and further emphasizing upon the protection of victims after trial. The National Criminal Justice Coordination Committee has established a Victim Support Fund to provide financial support to the victims. The various laws regarding victim's rights in Nepal has provided insights for India to follow such as the Sexual Offences Act, 2018 that gives specific protections to the victims. In the same vein, *Reality and Need for Criminalization of Marital Rape: Does the right of Husband overshadow that of Wife?* by *Sanskriti Singh and Ritvika Thakur*[11] re-iterated the historical narrative of India that women are treated as property of husbands as soon as they get married. This

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[8] Muskan Sharma, *Criminalization of Marital Rape: An Analysis of its constitutionality with reference to Judicial Pronouncements in India,* 6(4) IntlJLMgmtHuman, 929, 933-934 (2023), https://heinonline.org

[9] The Archaic Notions of Consent Theory: A Need to Criminalize Marital Rape in India, *Divya Dutta,* 3(3) IntlJLMgmtHuman, 915, 916-917 (2020), https://heinonline.org

[10] Bijaya Khadaka, *Rights of crime victim under the prevailing laws of Nepal,* Shantij, 915, 916-917 (2024), https://www.researchgate.net

[11] Sanskriti Singh and Ritvika Thakur, *Reality and Need for Criminalization of Marital Rape: Does the Right of Husband overshadow that of Wife?* RePEc, 490, 495-503 (2015), https://ideas.respec.org

paper argues in favor of criminalization of marital rape in India further stating that marital rape is an offense in 50 countries. The dominance of the husband over the wife to engage in sexual intercourse, is based on the primordial times whereas, the law should change its narrative that a woman can have the right to say 'no' to sex. It gives reasons as to why the husbands actually rape their wives and asks questions in the end about whether the women shall be entitled to greater rights if marital rape is criminalized. Emphasizing on the non-recognition of marital rape as a crime thereby partially giving protection to women who are below 18 years of age in BNS, 2023, the current framework of law offers a protection under the POCSO Act but it weakens it with the exception under BNS creating an inconsistency and harmful situation for victims of marital rape within child marriages. Under the POCSO Act, a person can be liable for sexual acts with their child bride but not for the same act with an adult wife who is above 18 years of age as was highlighted by the authors by *Pallavi Dubey and Dr. Sanjaya Choudhary* in the paper *Marital Rape: A Legal Study under POCSO Act.*[12] Operation Soteria Bluestone's main objective is to transform how police investigate rape cases in England and Wales. Using the academic-police collaboration to improve the reporting of rape cases and essential police practices in rape investigations. The core of this transformation lies in a unique police-academic partnership which gives a different perspective from the police as well as the prosecution referred in *Operation Soteria Bluestone Year 1 Report 2021-2022- [Secretary of State for the Home Department, by command of His Majesty].*[13] The concept of implied consent within marriage was elaborated again in *Criminalizing Marital Rape: A Comparative Analysis of Indian and US Laws* by *Arpit Dhaka, Pragati Parlya and Sakshi Mehta.*[14] India although raised the age of consent in case of sexual intercourse however with the age cap of only 18 years and under thereby clearly violating women's rights. The researchers have concluded that Exception 2 of Section 63 of BNS, 2023 is unjust and distinguishes married and unmarried women. Examining marital rape in India, its repercussions and violation of constitutional provisions was emphasized upon by the researcher Sanya Agarwal in her research *Marital Rape in India and Its Impact.*[15] It further raises the question of whether

[12] Pallavi Dubey and Dr. Sanjaya Choudhary in the paper Marital Rape: A Legal Study under POCSO Act, 2543-0554, IJETIR, 31, 32-33 (2024) https://www.jetir.org

[13] Operation Soteria Bluestone Year 1 Report 2021-2022, https://assets.publishing.service.gov.uk (last visited Apr. 2, 2025).

[14] Arpit Dhaka, Pragati Parlya, Sakshi Mehta, *Criminalizing Marital Rape: A Comparative Analysis of Indian and US Laws,* 2581-5504, 1, 4-6 (2024), http://www.penacclaims.com

[15] Sanya Agarwal, *Marital Rape in India and Its Impact,* 2582-7820, JCLJ, 747, 752-756 (2023), https://www.juscorpus.com

marriage deprives individuals of their sexual freedom and the foremost reason why India has not criminalized marital rape till date is because of its patriarchal roots and the effects of marital rape being detrimental to a woman's health and mind. Prosecuting the husband for raping his wife was seen contrary to popular norms which asserted that wife could not refuse her husband for his sexual demands as per the idea of Lord Hale and it was considered as her duty to fulfill those demands. Furthermore, he also opines that women can easily accuse their husbands of false charges of rape as is popularly known as "cry-rape syndrome" today thereby exempting the husbands from getting convicted under marital rape which was emphasized by *Sandra L. Ryder and Sheryl A. Kuzmenka* in their paper *Legal Rape: The Marital Rape Exemption.*[16] Further, *Lisa Forman Cody* in her article *"Marriage is no Protection for Crime": Coverture, Sex and Marital Rape in Eighteenth- Century England*[17] mentions that the doctrine of coverture meant that a woman's existence was merged with that of her husband and the separate existence of the woman ceases to exist after her marriage. Activists and legal reformists protested against the idea that recognizing women's individual rights and giving them the same, challenges the archaic notion that women must be suppressed. The paper also specifies that until the late 20th century, married women lacked protection from their husbands who forced to have sexual intercourse which meant that women could not take their husbands to courts for the commission of marital rape which was considered as a *'blind spot'* for the courts. In a similar tone, *Ayushma Dwa* in her paper *Marital Rape, A review of marital rape and just how wrong it is and why*[18] not only stated the history of marital rape and its long history connected with Sir Matthew Hale but also the causes, effects and theories of marital rape. It even emphasized about the objectification of women throughout the history of mankind especially as sexual objects. The society is touching its peak to modernity where most of the women are becoming independent and the bread-earners of the family, however, they are still viewed as sexual objects. Although the current Indian Legal framework does not recognize marital rape, the Former Chief Justice of India Dipak Misra opined that marriage should not be an excuse for committing rape as was stated in the paper *Criminalizing Marital Rape in India* by *Chirag Balyan and Kopal*

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[16] Sandra L. Ryder and Sheryl A. Kuzmenka, *Legal Rape: The Marital Rape Exemption,* 24(2), Marshall L. Rev, 393, 395-396 (1991), https://repository.law.uic.edu

[17] Lisa Forman Cody, *Marriage is no Protection for Crime": Coverture, Sex and Marital Rape in Eighteenth- Century England,* 809-834, jbr, 809, 812-815 (2022), https://doi.org

[18] Ayushma Dwa, *Marital Rape, A review of marital rape and just how wrong it is and why,* https://www.academia.edu (last visited Mar. 23, 2025).

Garg.[19] The paper focuses on the future aspects if marital rape is criminalized in India and how the judge shall interpret the laws relating to it. *Criminal Law (Amendment) Act, 2013: Will it ensure women's safety in public spaces?* by *Dr. Rituparna Bhattacharya*[20] mentioned about the criminal law amendment 2013 specified the criminalization of marital rape by Justice J.S Verma thereby providing greater rights and protection to women in every sphere. In almost every criminal law jurisdiction, rape is considered to be seen as a crime against women's purity which is an inhuman act seriously harming a woman's freedom and identity. In Nepal as well, the marital rape was not considered as a crime until Meera Dhungana, a women's rights advocate filed a case thereby making and recognizing marital rape as an offense u/s 219(4) of Nepal Criminal Code.[21] An article by *Julie Bindel* named, *The long fight to criminalize rape in marriage*[22] provide insights on the struggle behind criminalizing marital rape in UK where majority of them was in favor of the contrary. It was the contribution of the women's liberation movements, the role of the women activists who stood as a guard wall in front of the victims who had been suffering violence from their husbands for a prolonged period of time when finally in 1991, marital rape was a recognized crime in UK. Nepal's criminal code punishes a husband who rapes his wife for a term of 5 years which was 3-6 months of imprisonment earlier and it declared marital rape as an offense since 2000. The new Criminal Code treats marital rape differently from the general offense of rape in terms of the quantum of punishment which violates the very principle of equality between married and unmarried women as was stated in the article named *Nepal: Criminalizing Marital Rape, But not on par with Rape* by *Harsh Mahaseth.*[23] As previously mentioned in this paper, both UK and Nepal saw the change in terms of recognizing marital rape was because of the commendable efforts by the NGO's and women activists. One such women's group called *Women's Against Rape* which is a multi-racial women's group aiming to provide justice and help to women who face violence and torture. They even have won accolades in bringing changes in the legal framework of making rape within marriage a crime as well.[24] Whereas in Nepal, some of the stories bring chills down

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[19] Criminalizing Marital Rape in India, https://www.academia.edu (last visited Mar. 18, 2025).

[20] Dr. Rituparna Bhattacharya, *Criminal Law (Amendment) Act, 2013: Will it ensure women's safety in public spaces?*1(1), JSC, 13, 14 and 18 (2013), https://papers.ssrn.com

[21] Marital Rape: Newly recognized offense in Nepalese Criminal Law, https://www.academia.edu (last visited Feb. 10, 2025).

[22] The long fight to criminalize rape in marriage, www.aljazeera.com (last visited Feb. 21, 2025).

[23] *Nepal: Criminalizing Marital Rape, But not on par with Rape*, https://www.academia.edu (last visited Apr, 15, 2025).

[24] Women Against Rape, https://womenagainstrape.net (last visited Mar. 21, 2025).

our nerves where women get tortured and raped by their husbands to such an extent, that even the torture became normal for them and there was nothing left in their souls that could motivate them to share and talk to someone regarding the pain they go through in silence daily.[25] While we speak of the contribution of the NGO's behind addressing the issue of marital rape, there are certain NGO's that stand against the criminalization of marital rape in India by contending that it could potentially destroy the sanctity of marriage and overall social structure of India while also reasoning that there are other remedies available for women who suffer violence under the Indian Legal system.[26] The split between Hon'ble Justice Shakhdher and Hon'ble Justice Harishankar regarding criminalization of marital rape was a conversation that talked about in the country by everybody. Their points of argument and consideration was pertinent to look at in terms of addressing the issue of marital rape.[27] The international standards are framed with the objective that the state parties shall follow the norms and guidelines prescribed under it. India being a party and signatory to CEDAW and Beijing Declaration which specifically mandates that violence against women must be minimized and any action that goes against the policy, the State party shall be made accountable that includes recognizing marital rape as an offense. On the contrary, UK and Nepal also being the state parties to these international standards, have criminalized marital rape in their respective countries whereas, India lacks in that aspect.[28] Needless to say, when a woman is raped, the effects are unimaginable whether committed by a stranger or the husband and spousal rape is still a rape. [29] When it comes to protection of victims, the women's activists and Rape Crisis Centres have played a major role in giving redressal to the survivors with both emotional and psychological counselling and sometimes playing the role of a mediator where the husband and wife are made to sit together for a conversation in a situation that is most appropriate.[30] At the same time, the ISVA's and IDVA's (Independent Sexual Violence Advisors and Independent Domestic Violence Advisors) are vital which forms a part of the Crown

[25] Taboos Undercut Nepal's Marital Rape Law, https://womensenews.org (last visited Mar. 21, 2025).
[26] NGO opposes criminalization of marital rape in SC, says it would destabilize institution of marriage, https://m.economictimes.com (last visited Mar. 21, 2025).
[27] See *infra* note 170 at 76.
[28] See *infra* note 163 at 71
[29] What is Marital Rape, https://psychcentral.com (last visited Apr. 7, 2025).
[30] See *infra* note 192 at 87.

prosecution Service and they give advice upon reporting, to the survivors and make them comfortable without judging.[31]

1.7 RESEARCH METHODOLOGY

The methodology adopted is doctrinal, comparative and case law study based on primary and secondary sources.

The research is conducted with the help of the primary sources like the Criminal laws and statutes and secondary sources like articles, journals, law commission reports etc.

In this paper, a comparative analysis of the laws relating to marital rape in UK and Nepal has been made with the Indian laws.

The method of citation followed in this paper is the 20th Bluebook Edition.

CHAPTER 5
CONCLUSION

The comparative legal study of UK, Nepal and India explains although there were different policies adopted by UK and Nepal in addressing and criminalizing marital rape, however the objective behind it was the same that is to give greater security to married women and to not treat them differently from other women who are raped by strangers. In UK, the criminalization of marital rape marked a vital exit from the Doctrine of Coverture and entered into a phase where all women were to be recognized as individuals with their specific identities even when they are married. Victim protection measures, guidelines from the Crown Prosecution Service reflect a legal status where consent is fundamental in a conjugal tie. In Nepal, the judicial pronouncements have not only criminalized marital rape but also directed legislature to ensure that the punishment of marital rape to be proportionate with stranger rape. On the contrary, India's reluctance originates from societal myths about the institution of marriage and also the misuse of legal provisions. In relation to this, Senior Advocate, Rebecca John, appearing as amicus curiae with regard to criminalization of marital rape, contended that various legislations including Sections 65 and 80 BNS, 2023 (Sections 498A and 304B IPC, 1860) and the Domestic Violence Act, 2005 was insufficient to deal with the offense of rape within marriage. She added that Section 65 BNS cannot act as a substitute for Section 63. She further stated that other criminal remedies to address marital rape were not sufficient thereby highlighting upon the need to criminalize marital rape for the greater protection and welfare to the married women in India.[222] In response to this, the proposed model law mentioned in this paper, draws upon the best practices of UK and Nepal which provides a comprehensive framework for recognizing marital rape as a criminal offense. The model law not only seeks to punish the offender but also to empower and encourage the survivor to cope up with the trauma but with feeling a sense of relief. The adoption of the model law aims not only to criminalize the act of force in engaging in sexual intercourse but also affirms a woman's right to say 'no' and that right does not extinguish even when a woman gets married. Fundamental to the model law, the factor of consent must be uniform with regard to age, it should be revocable and freely given which was highlighted in the jurisdiction of UK and Nepal. As it is a common

[222] Muskan Sharma, *Criminalization of Marital Rape: An Analysis of its Constitutionality with reference to Judicial Pronouncements in India,* 6(4) ijlmh, 929, 934 (2021) https://ijlmh.com

misconception among all of us that having a law that is against the marriage, would lead to more breakdown of marriages. Instead, it would not break the marriage, but it would help people and especially women get rid of violence in marriage which is more dangerous. UK and Nepal set a precedent that when the offense of marital rape is put in the forefront, police and prosecution get more active in handling cases and assisting the survivors to get appropriate justice. However, in India it might seem absurd where a woman who is not married has every legal protection but for a married woman, she is asked either to accept or to get relief through the alternatives. We need to go back to the idea "*home is where we thrive"* but in order to make that idea alive, law must see that if that home is where a woman is given the worst of her pains, then it becomes a nightmare for her. Therefore, the model law aims to show that women still have the freedom even after marriage and it is much needed path where marriage is not supposed to be painful but a happy place to survive.

BIBLIOGRAPHY

STATUTES:

1. Bharatiya Nyaya Sanhita, 2023
2. Bharatiya Nagarik Suraksha Sanhita, 2023
3. Bharatiya Sakshya Adhiniyam, 2023.

ARTICLES:

1. Pamini Kasera, A Historical Analysis of Rape Laws in India, SSRN, https://papers.ssrn.com.
2. Lisa Forman Cody, Marriage is No Protection for Crime: Coverture, Sex and Marital Rape in Eighteenth-Century England, 809, Journal of British Studies 812-813 2022, https://www.cambridge.org
3. Michael J. Gonring III Spousal Exemption to Rape, 65, Marqeutte Law Review, 120, 121, 1981, https://scholarship.law.marquette.edu
4. Ayushma Dwa, Marital Rape A Review of marital rape and just how wrong it is and why, The University of Sheffield, 1, 3, https://www.academia.edu
5. Claudia Zaher, *When a woman's Marital Status Determined Her Legal Status: A Research Guide on the Common Law Doctrine of Coverture,* 94:3 LAW LIBR J. 459, 460, (2002)
6. Bijaya Khadka, *Rights of crime victim under the prevailing laws of Nepal,* 4, 1 shantij, 109, 114-120 (2024), https://nepjol.info
7. Dr. P.K Chaturvedi, A Legal History of Marital Rape: The Erosion of Anachronism, Indian Journal of Law and Justice, 122, 124, 2010, https://ir.nbu.ac.in.
8. Pallavi Dubey, Dr. Sanjaya Choudhary, *Marital Rape: A Legal Study under POCSO Act,* 4(10) IJETIR, 2583, 32-33 (2024), https://www.jetir.org
9. Marital Rape in India: An International Human Rights Law Violation, https://www.berkeleyjournalofinternationallaw.com (last visited Mar. 28, 2025).
10. Muskan Sharma, *Criminalization of Marital Rape: An Analysis of its Constitutionality with reference to Judicial Pronouncements in India,* 6(4) Ijlmh, 929, 932 (2021), https://ijlmh.com
11. Durga Rana Magar, *Silent Suffering: Nepal's Unheard Cry for Justice and Rehabilitation for Rape Survivors,* CENTRE FOR INVESTIGATIVE JOURNALISM NEPAL (Dec. 29, 2023), https://www.cijnepal.org
12. Dasari Nireekshana, *Marital Rape in India: Criminalization vs Legal Justification*, LEGAL RESEARCH AND ANALYSIS (Mar. 29, 2025, 12:05 P.M), https://legalresearchandanalysis.com
13. Provisions under the DV Act for punishing a husband for forceful sex with his wife. Whether they are enough? https://articles.manupatra.com (last visited Mar. 27, 2025).

14. Neves Jujevaz Dsouza, *A Comparative Analysis of the Legal Status of Marital Rape,* 5(1) Indian JLLegalRsch 1. 12-15 (2023), https://heinonline.org
15. Sanskriti Singh and Ritvika Thakur, *Reality and Need for Criminalization of Marital Rape: Does the Right of Husband overshadow that of Wife?* RePEc, 490, 495-503 (2015), https://ideas.respec.org
16. Sanya Agarwal, *Marital Rape in India and its Impact,* 2582-7820, JCLJ, 747, 752-756 (2023), https://www.juscorpus.com
17. Tanya Sehrawat, *Marital Rape Laws: India VIS-À-VIS US & UK,* 4(2) Indian J.L & Legal Rsch, 1, 12-13 (2022), https://heinonline.org
18. Dr. Rituparna Bhattacharya, *Criminal Law (Amendment) Act, 2013: Will it ensure women's safety in public spaces?* 1(1), JSC, 13, 14 and 18 (2013), https://papers.ssrn.com
19. The Archaic Notions of Consent Theory: A Need to Criminalize Marital Rape in India, *Divya Dutta,* 3(3) IntlJLMgmtHuman, 915, 916-917 (2020), https://heinonline.org

WEBSITES:

1. Marriage, https://dictionary.cambridge.org (last visited Feb. 14, 2025)
2. When did marriage begin? https://theweek.com (last visited Feb. 14, 2025)
3. The History of Marriage in the UK, https://www.marriagerecords.me.uk (last visited Feb. 14, 2025)
4. Marriage in Nepal, https://cla.com.np (last visited Feb. 14, 2025)
5. Marriage laws in India, https://blog.ipleaders.in (last visited Feb. 14, 2025)
6. Criminal Justice and Public Order Act,1994, https://www.legislation.gov.uk (last visited Feb. 15, 2025)
7. Chapter 18 Sexual Offenses 219- Prohibition of committing rape, https://www.ohchr.org (last visited Feb. 15, 2025).
8. Marital Rape-A Ground for Divorce, https://juriscentre.com, (last visited Mar. 19, 2025)
9. A Long Fight to Criminalize Marital Rape in Marriage, https://www.aljazeera.com (last visited Feb 22, 2025)
10. Sexual Offences Act, 2003, https://www.legislation.gov.uk (last visited Mar. 14, 2025)
11. Nepal Population, https://worldometers.info (last visited Feb 22, 2025).
12. Nepal's democracy revolution, achievements and failures, https://kathmandupost.com (last visited Feb 22, 2025)
13. A joint thematic inspection of the Crown Prosecution Service's response to rape- Phase one: From report to police or CPS decision to take no further action, https://hmicfrs.justiceinspectorates.gov.uk (last visited Mar. 15, 2025)
14. CPS Policy for Prosecuting Cases of Rape-The Survivors Trust, https://thesurvivorstrust.org (last visited Mar. 16, 2025)
15. Our commitment to rape victims-The Crown Prosecution Service, https://www.cps.gov.uk (last visited Mar. 17, 2025).
16. New privacy safeguards: rape victims' mobile phone data to be protected from unjustified intrusion, https://victimscommissioner.org.uk (last visited Mar. 17, 2025).
17. The Prosecutor's Pledge, https://www.cps.gov.uk (last visited Mar. 17, 2025)
18. The Parliamentary and Health Service Ombudsman, https://www.ombudsman.org.uk (last visited Mar. 16, 2025).

19. The Parliamentary and Health Service Ombudsman, https://www.ombudsman.org.uk (last visited Mar. 16, 2025).
20. Rape Laws and Legal Procedures for Rape Cases in Nepal, https://lawinpartners.com (last visited Mar. 15, 2025).
21. NHRC directs police to conduct effective investigation into rape, other incidents related to sexual assaults, https://myrepublica.nagariknetwork.com (last visited Mar. 15, 2025).
22. Nepal: information for victims of rape and sexual assault, https://www.gov.uk (last visited Mar. 15, 2025).
23. Gendered justice, kathmandupost.com (last visited Mar. 24, 2025).
24. Marital Rape: NGO Justice for Rights Foundation moves IA in SC citing "potential misuse of laws", https://www.aninews.in (last visited Mar. 25, 2025).
25. Press Trust of India, *NGO opposes criminalization of marital rape in SC, says it would destabilize institution of marriage,* THE ECONOMIC TIMES (Jan. 21, 2023, 2:20 PM), https://m.economictimes.com
26. Aneesha Mathur, *AIDWA moves SC to appeal against Delhi HC's split verdict in marital rape case,* INDIA TODAY (Sep. 5, 2022, 2:18 P.M), https://www.indiatoday.in Domestic Violence against Women, https://sansad.in (last visited Mar. 27, 2025).
27. Times News Network, *After rise in '21, domestic violence cases fall in '23,* THE TIMES OF INDIA (Jan. 5, 2024, 9:09 P.M), https://timesofindia.indiatimes.com
28. Violence facts and figures, https://swayam.info (last visited Mar. 27, 2025).
29. Crimes Against Women, https://pib.gov.in (last visited Mar. 28, 2025).
30. Esha Roy, *Crime against women rose by 15.3% in 2021: NCRB,* THE INDIAN EXPRESS, (Aug. 30, 2022, 11:52 P.M), https://indianexpress.com
31. Sonali Verma, *India recorded 51 cases of crime against women every hour; over 4.4 lakh cases in 2022:NCRB report,* THE TIMES OF INDIA, (Apr. 3, 2024, 12:08 A.M), https://timesofindia.indiatimes.com
32. Sexual Violence within marriage in India: Evidence from service records of a hospital-based crisis counselling centre, https://cehat.org (last visited Mar. 28, 2025).
33. Debby Jain, *Bringing Offense of 'Rape' within marriage 'Excessively Harsh', Other Remedies Exist: Centre Opposes Criminalization of Marital Rape By Supreme Court,* LIVELAW (Oct. 3, 2024), https://www.livelaw.in
34. Alexandra Topping, *Quarter of adults think marital sex without consent is not rape, UK survey finds,* THE GUARDIAN (Dec. 6, 2018, 12:01 P.M), https://www.theguardian.com
35. Rape: Prosecutions, https://hansard.parliament.uk (last visited Apr. 1, 2025).
36. The distressing truth is that if you are raped in Britain today, your chances of seeing justice are slim, https://victimscommissioner.org.uk (last visited Apr. 1, 2025).
37. Come Together to End Domestic Abuse: A survey of UK attitudes to domestic abuse 2022, https://www.womensaid.org.uk (last visited Apr. 1, 2025).
38. Manushree Mahat, *Laws on marital rape still murky in Nepal,* THE KATHMANDU POST (Apr. 15, 2024, 9:04 P.M), https://kathmandupost.com
39. Global Press Institute, *Lack of awareness, stigma fuel marital rape in Nepal,* GLOBAL PRESS INSTITUTE (Jan. 9, 2012, 10:00 A.M), https://news.trust.org
40. Bhrikuti Rai, *Police are failing rape victims, new human rights commission report says,* The Kathmandu Post (Apr. 1, 2025, 1:30 P.M), https://kathmandupost.com
41. Rape laws in Nepal insufficient, inconsistent and unenforced, https://www.recordnepal.com (last visited Apr. 1, 2025).

42. Nolina Minj, *Why does Indian law protect men who rape their wives?* SCROLL (Jun. 14, 2023, 9:00 A.M), https://scroll.in
43. Psychological counselling, https://www.womennepal.org (last visited Apr. 7, 2025).
44. Marital Rape-Myth, Reality and Need for Criminalization, https://www.ebc-india.com (last visited Apr. 5, 2025).
45. Victim's Personal Statement, https://www.cps.gov.uk (last visited Apr. 6, 2025).
46. Rape Review progress update, https://assets.publishing.service.gov.uk (last visited Apr. 6, 2025).
47. Rape Review progress update, https://assets.publishing.service.gov.uk (last visited Apr. 6, 2025).
48. The Opening of the first Rape Crisis Centre, https://womenslegallandmarks.com (last visited Apr. 7, 2025).
49. The Survivors Trust- Rape & Sexual Abuse Services UK, https://thesurvivorstrust.org (last visited Apr. 7, 2025).
50. What is Marital Rape? https://psychcentral.com (last visited Apr. 7, 2025).
51. Pranab Kharel, *SC plan: Fast track court for rape cases,* THE KATHMANDU POST (Oct. 16, 2014), https://kathmandupost.com
52. Gopal Sharma, *Nepal's rape victims shatter taboos to seek justice,* REUTERS (Jan. 20, 2015, 5:40 A.M), https://www.reuters.com

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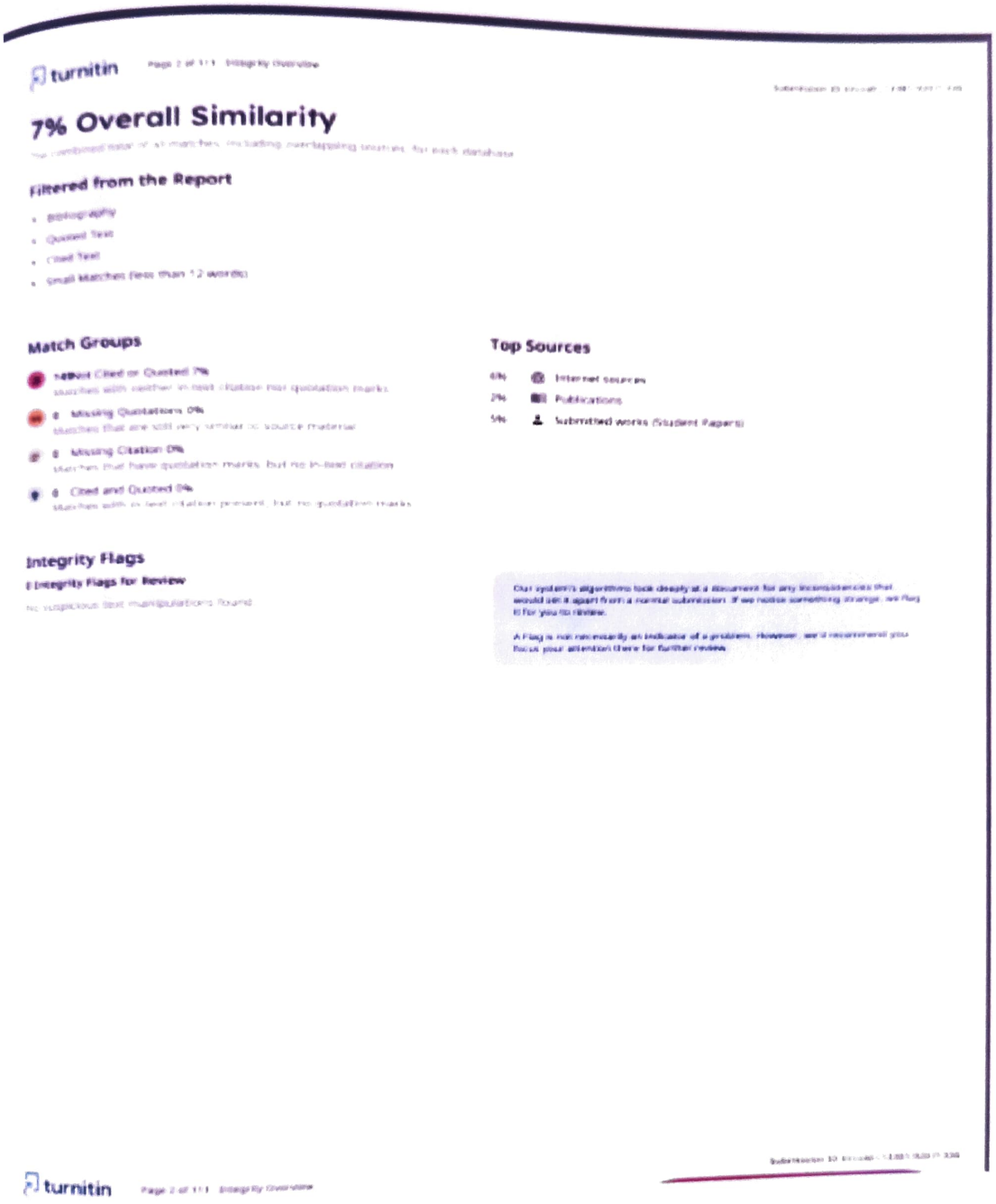

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